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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 98-111

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. Section 344.42, Stats., as created by 1997 Wisconsin Act 27, provides that if certain insurance certifications and recertifications are submitted to the Department of Transportation (DOT), an insurer must pay a fee of \$1.50 for each certification or recertification that is not transmitted electronically to the department. Under ss. Trans 197.02 (2), 197.03, 197.04 and 197.05 (2), DOT intends to include, as a source of fee revenue, notices of cancellation or termination of insurance policies. Given the specificity with which s. 344.42, Stats., refers to certifications and recertifications, what statutory authority exists for including insurance cancellations or terminations?

b. Section 344.42, Stats., provides that whenever the certifications and recertifications under ss. 344.31, 344.32 and 344.34 that are submitted by an insurer to DOT in any year exceeds 1,000, the insurer must pay a transaction fee of \$1.50 for each certification or recertification that is not transmitted electronically. In s. Trans 197.03, it appears that the department, in determining whether an insurance company reaches the 1,000 filing limit, intends to include filings submitted under s. 344.38, Stats., although the latter filings will in no case be assessed a fee of \$1.50. Under what statutory authority does the department include the filings under s. 344.38, Stats., in the 1,000 limit described in s. 344.42, Stats.?

2. Form, Style and Placement in Administrative Code

a. The fiscal estimate included in the rule is inadequate. Section 227.14 (4) (b) 2., Stats., provides that a fiscal estimate must include a projection of the anticipated state fiscal

effect during the current biennium and a projection of the net annualized fiscal impact on state funds. The department must have ample experience with the receipt of certifications and recertifications from insurance companies for purposes of proof of financial responsibility in order to make a reasonable and reliable estimate of the amount of revenues to be derived from the new \$1.50 fee. [See also s. 227.14 (4) (c), Stats., which provides that if a rule has no independent fiscal effect, the fiscal estimate prepared must be based on the fiscal effect of the statute.]

b. In s. Trans 197.02 (intro.), “words and phrases defined” should be replaced by “definitions” and “shall” should be deleted.

c. In ss. Trans 197.03 (1) and 197.06 (2), a comma should be inserted following the “1” in “1000.”

d. In s. Trans 197.03 (1) (a), “shall count” should be replaced by “counts.” The same change should be made in s. Trans 197.03 (1) (b).

e. Section Trans 197.03 (2) states that “To determine the number of certain certifications that are not submitted to the department by electronic means, the department shall count each original or duplicate paper filing as a separate filing, except filings submitted on behalf of an employee or family member under s. 344.38, Stats.” The material beginning with “to determine” through the comma on line 2 is unnecessary. Also, the material beginning with “except filings” through s. 344.38, Stats., can be excluded since the statute under which the rule is promulgated, s. 344.42, Stats., refers to certifications and recertifications under ss. 344.31, 344.32 and 344.34, Stats., that are submitted by an insurer to the department. Section Trans 197.03 could be rewritten as two sentences: “Each electronic filing counts as one filing.” “Each original or duplicate paper filing counts as a separate filing.” Section Trans 197.04 could then be rewritten to state: “The department shall assess a fee of \$1.50 for each paper filing if the insurer has filed 1,000 or more insurance certifications in a year.”

f. In s. Trans 197.05 (2), the title “Electronic SR-22 certifications” is the same as the title to s. Trans 197.05 (1) (a). It could be rewritten as “effect of electronic SR-22 certifications.”

g. In s. Trans 197.06 (4), “the rate of 18 percent per annum” should be replaced by “an annual rate of 18%.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section Trans 197.02 (3) refers to certifications submitted by “handwritten or typewritten documents or facsimile.” This excludes “printed” documents. There are two alternatives: (1) delete the material beginning with the comma preceding “including certifications”; or (2) add “printed” to the enumerated certifications.

b. Since s. Trans 197.05 (1) (a) and (b) are the same except for the form references, they could be combined as follows: “An electronic filing is considered to be filed on the date the electronic filing is posted to the department’s computerized database of driver records.” Also,

the provisions as currently written are confusing, since they provide that a form is considered filed on the date the transmission is received by the department and is posted at the department's computerized database. If the two events occur on different dates, it is obviously intended that the latter date, when the electronic filing is posted, will be the effective date. Also, who does the "posting"?

c. Section Trans 197.06 (2) states that "Twice per year the department shall bill each insurance company that has submitted in excess of 1000 filings to the department in a year as counted under s. Trans 197.03 (1) for all fees assessed under s. Trans 197.04." In addition to format changes [inserting a comma in "1000,"], the provision is confusing. Is it intended that the department will bill each insurance company in the calendar year during which the company has submitted in excess of 1,000 filings, or that the department will bill the insurance company in the following calendar year if it exceeded 1,000 filings in the previous year? The provision could provide that the department will bill insurance companies twice each year and will bill each insurance company that has exceeded 1,000 filings in the calendar year for the paper filings.

d. Section Trans 197.06 (3) should state that "Payment is due 30 days from the date of billing."